Supreme Court, U.S.
FILED

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JOHN ARDELL PURSLEY, *Petitioner*

v.

P. CALVIN ROBERTS, RUTH LAUBMIER, ROSALIE REGINA WILSON,
ANNA ELEANOR LONG, DONALD MILTON KELIUS,
FRANKLIN DAVID KELIUS AND RAY KELIUS,
Respondents

CONSTANCE KEHOE, EXECUTRIX FOR THE ESTATE OF DOROTHY F. MESSERLY, *Respondent*

GEORGE W. PEDLOW III, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

John Ardell Pursley, *Pro Se, Petitioner*
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Lock Haven, PA 17745

570-748-8199

October 27, 2000

29 pp

QUESTIONS PRESENTED

Whether, in an adjudication of relative rights to property ownership between two hostile claims, a state court infringes rights to due process, property and contract secured under the Fifth and Fourteenth Amendments and Article I, Sec 10 of the United States Constitution, by concomitantly

1. disregarding a fairly raised defense of property rights, lying in evidentiary facts and long settled substantive elements of law and rules of property, which were an inherent part of official government transactions, at the time they were concluded, whereby a prior claim to legal title had long ago been vested, ratified and validated,

2. and creating newly purported applicability of existing law, applied to divest the prior right, in a way previously long held by these same courts to be non-governing in the factual circumstances under which the prior right had vested,

3. and creating a subsequent rule of property, applied retrospectively in a manner so as to divest the prior right, such new rule being a wholly new, post trial construct never subjected to proof in Court, and appearing nowhere in prior existing law; and thereby purporting to perfect a junior claim, itself otherwise insupportable under prior law?

LIST OF PARTIES

The parties to the proceedings below were the petitioner John Ardell Pursley, and other members of the Pursley family interests, respondents herein Constance Kehoe, Executrix for the Estate of Dorothy F. Messerly, George W. Pedlow III, and through the Estate Of Ruth E. Pursley, Mellon Bank Central, N.A., Executor, other heirs and beneficiaries of Ruth E. Pursley, deceased.

Constance Kehoe, Executrix for the Estate of Dorothy F. Messerly, had inadvertantly been captioned in certain court record documents as 'Administratrix'. However, this immaterial in determining this party's actual identity.

The Estate of Ruth E. Pursley, Mellon Bank Central, N.A., Executor, however, had been relieved of its formal obligations to defend by Court order of Sept. 11, 1992 (App.11) and the entry of an executor's deed of distribution to the Estate's beneficiaries in Clinton County, Pa. Recorder of Deeds Book 575, Page 156 on Oct. 15, 1992.

The Forney D. Winner and Mary E. Winner, who were intervening defendants at Quiet Title, had their interest excepted out of that action by Common Pleas order entered Oct. 5, 1995, thereby relieving them of further obligation to defend. (App. 7)

Respondents P. Calvin Roberts, Ruth Laubmier, Rosalie Regina Wilson, Anna Eleanor Long, Donald Milton Kelius, Franklin David Kelius and Ray Kelius, Roberts et al., had always appeared as opponents to the Pursley interests, that is Estate of Ruth E. Pursley et al.

The case began as a Quite Title action filed in 1992 by Roberts et al., Plaintiffs, against Estate of Pursley et al., Defendants, with trial held in 1995. There followed a Court ordered Ejectment action, under the same Quiet Title docket number, with Pursley et al. as movants (but nominally still Defendants) and Roberts et al. as respondants (but nominally still Plaintiffs), with Trial in 1997.

Throughout the appeal process, the Estate of Pursley et al. were Appellants and Roberts et al. were Appellees.

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GEORGE W. PEDLOW III, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

The petitioner John Ardell Pursley respectfully prays that a writ of certiorari issue to review the Orders of the Pennsylvania Supreme Court of Aug. 1 and Apr. 13, 2000, in this matter, being under their final jurisdiction.

ORDERS and OPINIONS BELOW

Order, Supreme Court of Pennsylvania, Reconsideration of Petition for Review, denied, No. 254 M.D. Misc. Dkt. 1999, entered Aug. 1, 2000. (App. 48)

Order, Supreme Court of Pennsylvania, Petition for Allowance of Appeal, treated as a Petition for Review, as amended, denied No. 254 M.D. Misc. Dkt. 1999, entered Apr. 13, 2000. (App. 47)

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Final Order, Defendants' Amended Complaint in Ejectment is dismissed with prejudice. Clinton County Court of Common Pleas, Williamson, J., No. 432-92, entered Jul. 22, 1996 is unreported, (App. 8-10)

Quiet Title Discussion and Order, Clinton County Court of Common Pleas, Williamson, J., No. 432-92, entered Oct. 5, 1995 is unreported, App. 1-7)

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 1257. The Pennsylvania Supreme Court Order denied Reconsideration of Petition for Review on Aug. 1, 2000 (App. 48), having previously ordered denial of the Petition Apr. 13, 2000 (App. 47), with other Orders, Opinions and Decrees as listed in ORDERS and OPINIONS BELOW, p. 1. Taken together, these foreclosed the Pursley rights.

CONSTITUTIONAL PROVISIONS and STATUTES INVOLVED

The Constitution of the UNITED STATES of AMERICA:

The 5th Amendment to the U.S. Constitution, provides in pertinent part: no person "shall be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

The 14th Amendment to the U.S. Constitution, provides, in Section 1. "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article I, Sec. 10, of the U.S. Constitution, provides in pertinent part: "No state shall . . . . pass any . . . . law impairing the obligation of contracts, . . . "

The following Pennsylvania Acts of General Assembly are reproduced in the Appendix hereto, at the page numbers listed. Historical Notes in Purdon's Pennsylvania Statutes Annotated provide relationships between older enactments and current statutes.

Pa. Act of March 18, 1775, 1 Smith's Laws 422 (now, Title 21 P.S. 444) (1775 Recording Act; Recorder of Deeds) (App. 49-50; given with 21 P.S. 351)

Pa. Act of April 3, 1804, P.L. 517, (now, Title 72 P.S. 5020-410, 5981, 6044, 6091, 6092, 6134) (in part: unseated land law) (App. 51-55)

Pa. Act of March 28, 1806, P.L. 644, (now, Title 72 P.S. 5020.409) (in part: unseated land law) (App. 55-56)

Pa. Act of April 4, 1809, P.L. 192, (now, Title 72 P.S. 5872) (in part: unseated land law) (App. 57-58)

Pa Act of March 13, 1815, P.L. 177, (now, Title 72 P.S. 5782, 5911, 5981, 6001, 6043, 6091, 6093, 6131, 6132, 6134, 6136) (in part: unseated land law) (App. 58-63)

Pa. Act of March 14, 1846, P.L. 124 (now, Title 21 P.S. 385) (permissive official deed recording in Recorder of Deeds office) (App. 64-65; with Purdon's notes)

Pa. Act of Apr. 30, 1879, PL 34 § 1 (now Title 72 P.S. § 5811) (Record of payment of unseated land taxes) (App. 66)

STATEMENT OF THE CASE

This case arose as a dispute between two hostile claims to ownership rights in property. The Constitutional case here turns on what the state courts did and did not do with regard to abrogations of one claimant's rights to due process, property and contract secured under the Fifth and

Fourteenth Amendments, and the Contract Clause of the United States Constitution, during the adjudication of these property rights.

The case began as a Quite Title action filed in 1992 by Roberts et al., Plaintiffs, against Estate of Pursley et al., Defendants, with trial held in 1995. There followed a Court ordered Ejectment action, under the same Quiet Title docket number, with Pursley et al. as movants (but nominally still Defendants) and Roberts et al. as respondants (but nominally still Plaintiffs), with Trial in 1997. With Trial Court award to Roberts et al., the Pursley interests undertook an appeals process through Pennsylvania Superior and Supreme Courts, always appearing as Appellants. John A. Pursley further filed under Pa. RAP 123 a special 'Request for Ruling', then a 'Petition for Review', with a final denial by Pennsylvania Supreme Court of Reconsideration August 1, 2000. (App. 48)

The factual background of the property dispute developed over a 150 year time span, while relevant law evolved over almost 300 years. There exists a historical evolution of law and ownership events, discussed in the context of determining what law was in force at what times with regard to the times certain official government transactions were entered into by private citizens.

The Pursley claim rests upon a body of law and rules of property, long settled, governing all aspects of a special form of judicial sale, by involuntary alienation, called Treasurer's Sales for delinquent unseated land taxes. This law forms an inherent, inseparable part of the transactions through which the Pursley claim accrued, vested, was ratified and validated. It is indispensable in the Pursleys' defense of their title.

Unseated land is unsettled, unoccupied, uninhabited, undeveloped, uncultivated, unfenced wild mountain woodland, and had for over 200 years been distinguished from seated, or settled land upon which people resided or earned a living. The concept of selling lands occupied by owners, tenants, or even squatters, for delinquent taxes was anathema to Revolutionary era Pennsylvanians, so they adopted

this distinction to force absentee owners to pay their taxes on these unsettled nonproductive lands.

Early Pennsylvania county property tax authorities were in the untenable position of being unable to enforce tax collections by the 'distraint and sale' of personal property process used with seated land, from absentee owners of thousands of unseated, undeveloped wild woodland tracts. The Pennsylvania General Assembly responded with a series of enactments in 1804, 1806, 1809, 1815 and 1879 (App. 51-66) which, with amendments, became the unseated land law for assessment, taxation and tax delinquency sales of undeveloped wild lands. Between 1815 and about 1950 well over 400 appellate cases were added to this body of law.

The Treasurer's sale and deed, central to the Pursley defense, were first given statutory operation as a form of sheriff's sale and deed, with these powers transferred to the Treasurers, unmodified, by enactment of 1809. Treasurer's sales and deeds retained throughout their more than 150 years of active use certain specific legally binding elements which they shared with the old forms of sheriff's sales and deeds, from which they were an offspring. This included the form of acknowledgment of the deed - by the selling officer taken by the Prothonotary; the place of acknowledgment - before the Judges in open Court of Common Pleas; the affixing of the Court of Common Pleas Seal on the instrument; and the Prothonotary's recording of a legally definitive abstract of the deeds in the Court of Common Pleas records, in books which became known as the Treasurer's Deed Books of acknowledgments of unseated land tax sales, and Sheriff's Deed Books.

Documentary evidence provided to the Court by the Pursley interests as an initial response to Roberts at al. Quiet Title action of 1992 included their 1924 Treasurer's Deeds bearing the Clinton County Court of Common Pleas Seal, and clearly stating "in pursuance of Act of Assembly and titled an Act to Amend the Act directing the mode of selling unseated lands for taxes, passed the Thirteenth day of March, one thousand eight hundred and fifteen, and the several supplements thereto", (App. 58-63) plus tax sale book

and Prothonotary's office Treasurer's Deed Book statutory record entries, referred to by Trial Court as recorded documents: Treasurer's Sale ledgers. (App. 27)

Petitioner John A. Pursley has by devise and decent inherited an undivided interest in certain property from D.C. Pursley, who had entered into statutory defined unseated land tax sale transactions with the government of the County of Clinton, Commonwealth of Pennsylvania, between 1896 and 1924. Thereby he acquired fee simple absolute title in 'in rem' proceedings to a nominally 300 acre tract, assessed at various times in the tract name of Willing or Devling. The Devling partners had purchased, at an 1854 Treasurer's Sale, this tract, it having been first assessed separately in 1850 out of a much larger tract owned by the Philadelphia Keating land sales partnership.

The land remaining unseated, and with the sale process unchallenged, heretofore this title was indefeasible by any action or inaction on the Pursleys' part, other than failure to pay taxes.

The Pursley claim had deraigned through a series official sales of involuntary alienation, with present Pursley ownership actually vesting only following the most recent such sale in 1924. All prior title was absolutely divested and extinguished by that sale, and in actuality, by each of the preceding sales. It may well be said that the ground passed through a chain of separate, distinct 'non-derivative' titles, and that there is no 'chain of title' in the traditional sense of that phrase: which is, one legal 'derivative' title conveyed intact through a succession of grantors and grantees

The Roberts et al. claim is traceable from the present day by devise back through their antecedent Kelius' 1964 acquisition of the title claim of Shade, whose claim lay in a deed from the Hamlin land partnership to Shade in 1901. However, prior to 1901 there is a disconnect in title and lot description arising from the Hamlin acquisition of nothing more than residual acreage from the Keatings in 1884. By the very terms of the 1884 deed, the Keatings were manifestly in the land sales business. (App. 69-70)

From 1802 to 1884 numerous Keating intra-family partnership deeds conveyed only the residual acreage of an original 297,428 acres. All these deeds, including the Keating to Hamlin deed in 1884, contain an explicitly stated omnibus exception for unaccounted prior conveyances, reservations and agreements out of the Keating holdings. (App. 70) No explanation has been given in Court for the lot description disconnect for the 300 acre disputed tract in this chain between 1884 and 1901, beyond that given by Trial Court: the Hamlins never owned the land (App. 26). If so, their title was a nullity, no title at all (Philbrick, U. Penn. L. Rev., v. 91, n. 2, Dec. 1944, p. 125, at 168-171; 180-181; v. 93, Mar. 1945, p. 259, at 297), and they conveyed a nullity to Shade in 1901. (in part, App. 87-88)

With this revelation, the Trial Court found it necessary to judicially legislate by 'judicial notice' (App. 28) in a post trial proceeding a subsequent rule of property, and apply it retrospectively, as a time bar against recognition of, or search for, all matters of title, good or bad, older than 60 years. This time bar purports to have the power of a statute of limitation, but the Court used it ostensibly to confirm Roberts et al. as 'bona fide purchasers' eligible for 'recording act' protections against a prior 'unrecorded 'claim. If legitimate, however, it would in actuality take the whole case out of the recording act body of law and into yet another realm, 'marketability of title acts'. However, the time bar is strikingly similar to a statute of limitation for quieting titles, which had 50 years ago been voided by the Pennsylvania Supreme Court under the United States and Pennsylvania Constitutions. (App. 89-107)

At this juncture, it is important to note that, while the Pursley right to ownership and title in the subject property has been challenged, and voided by the Courts, the validity of the underlying transactions through which Pursley acquired title, the official statutory unseated land tax sales, have never been challenged nor adjudicated in this case. Clinton County public records retain all the statutory proofs and legal notices necessary to support the sales, and these have all been entered in evidence by Pursley in defense of

title. These sales, deeds, and resultant title have been further ratified and validated by modern statute against many potential defects. (e.g. App. 85-86)

Trial and Superior Courts clearly accepted the recording of pertinent public records, the "Treasurer's Sale ledgers", (App. 25, n3 and 27; 34, n5, respectively), these being specifically the statutory mandated Court of Common Pleas records of such sales. It was these very records, however, that Superior Court dismissed as essentially inconsequential with regard to providing notice of a prior claim under an unseated land tax sale. (App. 41)

Ironically had Roberts et al. challenged any of the tax sales, the case would have been placed squarely and inescapably within the purview of the unseated land law. Prior law affords some basis for challenge to sales less than 30 years old, but though the time span is now 73 years, neither Roberts et al. nor their predecessors made any hint of such challenge, and are now barred.

The Federal question herein was raised early on the basis of due process. Although it now appears in retrospect that the Pursley interests were precluded, ab initio, from any possibility of mounting a defense of their claim, it was by a 'tyranny of small insults'. The first deprivation of Pursley due process rights was cited in Pursley interest member Kehoe's Court requested post ejectment trial brief, served Oct. 15, 1997, wherein it was stated that, in the absence of the 'bona fide purchaser' doctrine in Roberts et al. pleadings, it was improper to raise it at Trial, and a due process error. (App. 68) Superior Court disagreed. (App. 42).

The '60 year search' concept, purportedly having the power of a (nonexistent) statute of limitation against recognition of old claims or defects, was introduced in Roberts et al. post trial brief, and thereafter accepted by the Court as ostensibly confirmative of their BFP status, eligible for recording act protections. Pursley excepted to this usage at the earliest moment. (App. 70-71) This '60 year search' was never subjected to proof in any Court, and Pennsylvania does not have law of its ilk, a 'marketability of title act', having voided a similar act as Federally unconstitutional

in 1950 (*Girard Trust Co., Trustee, Appellant, v. Pennsylvania Railroad Co.*, 356 Pa. 576, citing lower Court reported at 71 D.& C. 533, 1950) (App. 89-107).

On appeal Superior Court entirely ignored the separate appeal questions of John A. Pursley (App. 73-74; also see App. 34), direct answers to which would have necessarily confronted the unseated tax sale law origins of Pursley ownership, as well as the extra-legality of the '60 year search'. Furthermore, that Court accepted what it said was proven by the record, that Roberts et al. were BFPs, (App. 39) never adjudicating the lower Court's use of the '60 year search' as the confirming basis for that status. Nevertheless, the Court's published Opinion caption materially misrepresents its contents by stating that it adjudicates both the Kehoe and John A. Pursley appeals. (App. 30-31)

Denial of appeal, and thereafter reconsideration, by the Pennsylvania Supreme Court was on Aug. 23, 1999. John A. Pursley filed on Sep. 22, 1999 with Superior Court under Pa. RAP 123 a 'Request for Ruling', forcefully restating the unconstitutionality issue that had been compounded by that Court's failure to rule on his separate appeal, and invoking the 5th, 9th, 10th, and 14th Amendments of the United States Constitution. Denied (App. 46), Pursley made Petition for Review to Pennsylvania Supreme Court, elaborating upon unconstitutionality by reference to case law which invokes Contract Clause issues, as well. (App. 90) Reconsideration on this was denied Aug. 1, 2000, thereby terminating Pursley redress before the Pennsylvania Courts.

REASONS FOR GRANTING THE WRIT

I

The Pennsylvania Courts have abrogated rights to private property through failure and refusal to provide due process adjudication of the Pursley claim on the basis of official statutory sale law, by operation of which their claim had its origin in 1854 through 1924, and which law was an inherent

part of those and other such transactions at the times they were concluded.

No principle is more firmly entrenched in the law than that the laws which were in effect at the time a transaction was concluded enter into its obligation and become an integral part of it, and shall guide the decision; and that the case shall not be altered, in its substance, by any subsequent law (*Girard v. PRR*, supra., App. 101); *Tradesmen's National Bank & Trust Company, Trustee v. Floyd, Appellant, et al.*, 156 Pa. Super. 141; 39 A.2d 728; Pa. Super. LEXIS 561 (1944), citing *Menges v. Dentler*, 33 Pa. 495, 498 (1859)). Treasurer's Sales, as judicial sale transactions, are contracts (47 Am Jur 2d, Judicial Sales, Sec. 1).

These acts of the Courts operate retrospectively to take what is by their own prior acts and prior, existing law, the property of one party and without consent, transfer it to another, without compensation (*Girard v. PRR*, supra., App. 101). The entire exercise is a direct attack upon the principle of stare decisis respecting long settled rules of property being protective of prior vested property rights (Pennsylvania Law Encyclopedia, Courts, Sec. 76 and 78).

A fundamental deprivation arising from the Courts' adjudication lies, in part, in their refusal to acknowledge that the statutes and precedents relevant to each claimant's case exist in two entirely separate areas of law. In their modern expression, these are entirely separate Titles of the Pennsylvania Code. The statutory and case law basis for defense of the Pursley interests' title lies largely in Title 72, Local Taxation, and Title 42 Pa. C.S.A. 1722, Judiciary and Judicial Procedure (specifically at Note 310) as published in Purdon's Pennsylvania Statutes Annotated (P.S.A.), in sections dealing with unseated land tax delinquency sales and the proper recording of certain judicial sales, that is, involuntary alienation.

Four written Court opinions in this case which bear upon the issue of title are devoid of a single citation to elements of statutory or case law which constitute the unseated land law. Nor do these opinions contain a single citation to

statutory or case law refuting or contravening elements of that large and long settled body of law, or attempting to establish why they do not apply to the case. Although the opinions contain several mentions of events and documents actually derived under unseated land law, their comments are entirely based on the Courts' unsupported assumptions and suppositions, most materially misrepresenting the actual state of affairs with regard to the operations of that law, and frequently excepted to by the Pursley interests.

Furthermore, the Courts ignored the substantive meaning and effect of Title 21 P.S. 385, enacted 1846 (App. 67), the sole authority for re-recording of Treasurer's Deeds in the Recorder of Deeds office, and then purely permissively, such as done by the Pursleys in 1967. Ignored, too, is that Court of Common Pleas records of judicial sales (i.e. Treasurer's Deed Books, i.e. "Prothonotary's Book of Treasurer's Acknowledgments of unseated lands", App. 41) were the full equivalent of Recorder of Deeds' records, as consistently held since *Shrider v. Nargan*, 1 Dall. 68, (1782); *Naglee v. Albright*; 4 Whar. 291, 297 - 298; (1839); *Kaul et al. v. Lawrence et al.*; 73 Pa. 410 (1873); *Watson et al. v. Jones et al.*; 85 Pa. 117 (1877); *Lee, Receiver of Fox et al., Appellants v. Newland et al*, 164 Pa. 360; 30 A. 258; p. 15 (1894); *City of Uniontown v. McGibbons et. al.*; 115 Pa. Super 132, 139 - 141 (1934); Henry, G.M., 1953, Pennsylvania Evidence; West Pub. Co.; see p.359, Sec. 355; *Proctor v. Sagamore Big Game Club*, 166 F. Supp. 465; affirmed 265 F. 2d 196; certiorari denied 80 S. Ct. 81, 361 U.S. 831, 4 L. Ed. 2d 73 (1959); *United States, Plaintiff, v. 137.02 acres of land*; 334 F. Supp. 1021,1024 (1971) (App. 75-87). They are definitively not "dehors the record" per *Reiter v. Kille*, 143 F. Supp. 590 (1956), but are constructive notice (42 Pa. C.S.A. 4302, and prior statutes; Historical Note, Purdon's P.S.A.).

Roberts et al. failure, indeed avoidence of, attacking the underlying tax sale process, in their attack on the Pursley title, does not comport with prior law. *Bell et al. v. Provance et al.*, 59 Pa. Commw. 522; 430 A.2d 391; 1981 Pa. Commw. LEXIS 1509, reiterates a principle present in Pennsylvania unseated land law since an early time:

"The law is well settled that the existence of a Treasurer's Deed establishes prima facie lawful title in the grantee by a [**393] rebuttable presumption of the regularity of the acts of public officials in accordance with the duties of their offices and the applicable laws. Albert v. Lehigh Coal and Navigation Co., 431 Pa. 600, 246 A.2d 840 (1968); Curtis Building Co. v. Tunstall, 21 Pa. Commonwealth Ct. 81, 343 A.2d 389 (1975). . . Therefore, a person challenging title obtained through a Treasurer's Deed has the burden of proving a defect or irregularity in the proceedings which produced the deed. Clark v. Weinberg, 38 Pa. Commw. Ct. 300, 393 A.2d 507 (1978)".

Also pertinent are *Hughes v. Chaplin*, 389 Pa. 93 at 95; 132 A.2d 200 at 202 (1957), citing Beacon v. Robinson [correctly *Beacom v. Robison*], 157 Pa. Super, 515 at 521; 43 A.2d 640 (1945), which gives a succinct history of both the original unseated land, and the later seated land, Treasurer's Sales for delinquent taxes.

II

The Pennsylvania Courts have, rather, adjudicated the case entirely on the basis of a second body of law, and equitable principles, themselves long settled, derived from and primarily applicable to conveyance by private grant, such as those which most commonly occur between a private grantor and grantee, but applied in a way previously long held by these same courts to be non-governing in the factual circumstances under which the prior right had vested.

These are the Recording Act of Mar 18, 1775, 1 Smith's Laws. 422 (Title 21 P. S. 444), the bona fide purchaser (BFP) doctrine, title search practice and record notice,all inextricably linked conceptually to one another, and with notice purported by the Courts in this case only to be found in the Recorder of Deeds office. This second body of law, alone, provides a possible basis for the Roberts at al. claim, with the Courts purporting to recognize in them subsequent BFP status eligible for Recording Act protections against a prior

claim, the Pursley's. A central issue of the case turned on what constituted 'recording'. For private sale conveyances, this had been since 1715 in the Recorder of Deeds books. For Court of Common Pleas judicial sale conveyances, this had been since 1705 in the Prothonotary's court records (*Naglee v. Albright*, supra; see App. 75).

In what is virtually circular reasoning, the Courts herein seem to insist that for Roberts et al. to successfully perfect their only basis for a claim (aside from the '60 year search' issue) in BFP status and the protections of the recording acts, all notice of prior claims must have been available in the Recorder of Deeds books, and, for that reason alone, the Pursley antecedents should have forthwith filed their judicial sale official Treasurer's Deeds in the Recorder's books under the recording act for private conveyances, 21 P.S. 444 (1775). And this, notwithstanding the incontrovertible, but nevertheless entirely ignored, fact that such official deeds may only be filed in the Recorder's books under 21 P.S. 385 (1846), and this is purely permissive (App. 64). The statutory and case law mandate for recording the earlier forms of judicial sale conveyances had always been in court records, a fact clearly cited, but then entirely ignored, by Superior Court in this case (App. 41).

This is not to say that title search has no relevance whatever to prospective purchasers of unseated land tracts. However, the very character of the land, wild, wooded and unoccupied, was a warning to any prudent person to exercise caution. Under prior law and rural county practice a search of statutory public unseated land assessment and tax sale records was required. That is because the land itself, and not the owner, was debtor for the taxes, and the land could be sold in whatever name the land was assessed, so long as that name was historically associated with the identity of the tract (*Bannard v. New York State Natural Gas Corp.*, 293 A. 2d 41). A search by tract identity in the unseated land records was the only way to find the statutory mandated record of tax payments, or tax delinquency and possible sale, and the mandated notice and other legal prerequisites for an absolute sale, as the case may have

been (*Goodman v. Sanger*, 91 Pa. 71). (App. 78)

Even the unseated land tax payments had their own separate recording statute, totally unlike any other form of property tax payment (Pa. Act of Apr. 30, 1879, P.L. 34) (App.66).

This was unlike the scheme for developed seated lands, where the owner was the assessed and personally liable debtor for the taxes, and personal rather than real property was subject to distraint and sale for tax delinquency, until more recent times when new law made all lands subject to sale. In the case of a judicial sale the pertinent court records would be locatable under the true owner's name as it existed at the time of sale. Even here, under the older forms of seated land tax sales, recourse would have necessarily been to the same Prothonotary's books of Treasurer's Deeds acknowledged in open Court of Common Pleas, kept in parallel with those for unseated land tax sales.

In this case, this is particularly relevant, because Roberts et al. claim to believe that their antecedent Kelius in 1964 had his title search performed by Mr. Klewans, now deceased, an acknowledged Clinton Co. unseated land expert. It was this search which the Court presumptively found, post trial, need not have extended back in time beyond the 1901 deed from Hamlin to Shade, nor for there to have been any reason to search the unseated land records, (App. 28) something any unseated land expert would have done for such a tract.

It is this part of the Trial Court record that Superior Court blindly accepted as substantiating Roberts et al. BFP status. (App. 39)

III

Trial Court created a subsequent rule of property, applied retrospectively in such manner as to divest the prior right, such new rule being a wholly new, post trial construct appearing nowhere in prior existing law, referred to as the '60 year search'.

The '60 year search' concept is critical here, as its purported application actually cuts off the recognition of a 'common source of devoution of title', as well as fatal defects in the chain through which Robert's et al. claim.

Superior Court states (App. 40) that a the finding of BFP status and applicability of the recording act (21 P.S. 444) in securing title in a subsequent purchaser is not dependent upon a 'common grantor', but rather some person in a chain of devolution of title, a 'common source' of title, called a 'common record owner' by Philbrick, supra. (App. 88). Reiterating, a '60 year search' if valid law, would cut off recognition of any possible common source into the Pursley and Roberts et al. chains, and thereby, take the case out of the purview of the recording act.

Furthermore, this '60 year search', if validly applicable retrospectively to the 1964 - 1901 period critical to perfection of Roberts et al. claim, would cut off all recognition of the disconnect in lot description between the 1884 and 1901 Hamlin deeds; the omnibus exceptions in the 1884 and prior Keating deeds (App. 70); the clear fact in the 1884 deed that the Keatings had been in the land sales business; and the clear fact recognized by Trial and Superior Courts (App. 26-27, 34-35, repectively) , but then ignored, that Hamlin, as the purported interim grantor, never owned this disputed tract, and could for that reason not convey any title at all, for his conveyance to Shade was a nullity (App. 87-88). This conceptualization also takes the case out of the 'BFP - recording act' protections, in that it acts as a statute of limitation curing all prior defects older that 60 years. Excising the '60 year search' out of Trial Court's holding would necessarily cause Roberts et al. supposed BFP status to fail, because they would then be on notice of the fatal defects in the chain through which they claim.

Trial Court's reasoning is, however, couched in terms of cutting off any possible detrimental effects to Roberts et al. of statutory mandated public record notice of prior unseated land records of assessments, tax payments and Treasurer's Sales, the latter being the Court's own judicial sales permanently evidenced in the Court's own records, and which nec-

essarily form the basis for the Pursley title. This is of utmost convenience to Roberts et al., and a total deprivation of the Pursley interests' basis for defense of their rights to ownership in this property. Trial Court's arbitrary action in this regard effectively reenacts Section 2 of the unconstitutional 1949 Act for the Quieting of Titles. (App. 104)

It is instructive to note that a solidly settled tenet of Pennsylvania land is the statute of limitation for adverse possession, by which unchallenged open notorious occupancy for 21 years will oust a true owner in favor of an intruder. Trial Court held that Roberts et al. could not substantiate an adverse title, even with an over 90 year claim since the 1901 deed to Shade, precisely because the tract was wild wooded land (App. 28-29) Pennsylvania law had long recognized that unseated land could not, by its very unoccupied character, be subjected to proscriptive adverse possession under the long settled 21 year statute of limitation. However, title to a tract which, though once unseated, had become openly occupied for 21 years, and claimed as adverse, would necessarily be forever cured of any notice imparted by older unseated land records. But that did not and cannot happen in this case.

Furthermore, owners, such as the Pursleys, of fee simple absolute title under unseated land Treasurer's Sale and Deed have been under no obligation to seat, i.e. develop, the land in order to provide 'open notorious' notice of occupancy to the world. Also, much of the surrounding land is held, undeveloped, as State Forest Land for conservation purposes.

In total disregard of the foregoing substantive elements of prior law, the Courts purport to supplant the principles of law and rules of property operative under the unseated land law with those occurring within the law governing conveyance by private grant. When viewed from the perspective of a claim based on unseated land law, this is effectively the retrospective application of subsequent rules of property to circumstances of fact and law wherein the same courts had long held they were not governing law. Pursley was precluded from a defense under the law in force when, and by operation of which, the vesting transactions occurred,

and thereby deprived of any semblance of due process.

In an adjudication of relative rights to property ownership between two hostile claims, a state court infringes rights to due process, property and contract secured under the Fifth and Fourteenth Amendments and Article I, Sec. 10 of the United States Constitution, by abrogating 73 to 143 years after the fact, its own acts pursuant to statutory conveyance of property in governmental transactions.

By "requiring the treasurer to acknowledge his deed in open court the law intended to consummate the confiscation of property for non-payment of taxes by a solemn act done publicly in open court by whose records it would always appear, that no person interested could justly claim to be ignorant" (*Lee v. Newland*, supra., see App. 82-83). The Courts' assiduous avoidance of acknowledging the substantive elements of that law, fairly raised by a successor to the conveyee in defense of ownership, ab initio and absolutely, precluded any possibility of mounting a defense of a valid claim. Bluntly, in this case the Courts 'changed the rules of the game' 73 to 143 years after the relavent transactions were concluded. This action by the Courts is an egregious deprivation of due process from which no citizen could ever find protection, or defend against, before Courts so inclined.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted to review the Orders of the Pennsylvania Supreme Court of Aug. 1 and Apr. 13, 2000, in this matter, being under their final jurisdiction.

Respectfully submitted,

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